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Counsel for Defendant HERNANDEZ-PEREZ

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

NICANOR HERNANDEZ-PEREZ,

Defendant.

No. CR 10-583 RS

STIPULATION and ~~PROPOSED~~
ORDER TO CONTINUE MOTION
SCHEDULE

Date: December 14, 2010

Time: 2:30 p.m.

Court: The Honorable Richard Seeborg

Undersigned counsel stipulate as follows:

1. A motion hearing is currently scheduled in this matter on December 14, 2010 at 2:30 a.m. on Mr. Hernandez-Perez' Motion to Dismiss Indictment;
2. Defense counsel needs additional time to procure declarations and research the motion. The issues surrounding this motion are proving more complicated than defense counsel originally anticipated, after consulting with an immigration expert and providing Mr. Hernandez' immigration file to that expert. Four complex issues of law involving the intersection of immigration precedent and 8 § 1326(d) precedent have been identified. Moreover, Mr. Hernandez' children have not yet been located, who may be able to provide declaratory support for the motion. All of this evidence must be included in the opening motion;
3. In addition, defense counsel has been otherwise occupied with two time-

1 intensive cases that have taken up most of her work time during the month
2 of October and early November. The two cases are *United States v.*
3 *Saavedra*, CR-10-179 WHA, which is a drug conspiracy case involving a
4 year-long wiretap and multiple kilograms of heroin, cocaine and
5 methamphetamine. This case was set on an expedited trial and motion
6 schedule on September 14, 2010 and despite counsel's best efforts, has not
7 settled. Complex motions, including a wiretap motion involving five
8 wiretap and 10 pen register applications, are due November 16, 2010. This
9 case involves two prior convictions and the client is facing mandatory life
10 imprisonment. His plea offer to avoid the filing of his prior convictions
11 expires next week, on November 16, 2010. Most of the latter part of
12 October has thus been spent researching the wiretap and other motions
13 related to this case, as well as counseling the client on the viability of a trial
14 defense;

- 15 4. Defense counsel's other major case, *United States v. Brosnan*, CR-10-O-
16 068 WHA, is now set for trial November 29, 2010. This case is a ten count
17 wire fraud, perjury, obstruction of justice, and aggravated identity theft
18 case that was continued for trial from October 18, 2010 due to production
19 of 6 hard drives that defense counsel needed to hire a forensic expert to
20 review and consult with counsel. Defense counsel has been working on
21 this case for the remainder of the month of October and now into
22 November. Trial preparations are ongoing, and trial is anticipated to fully
23 occupy defense counsel from November 29, 2010 through December 14,
24 2010;

- 25 5. Due to the complexity of Mr. Hernandez' motion, defense counsel believes
26 Mr. Hernandez will be prejudiced if she attempts to file the motion during
27 the time period in which she is addressing Mr. Saavedra's mandatory life
28 case and Mr. Brosnan's trial, without fully researching the relevant issues
and attaching the necessary declarations;

6. For these reasons, defense counsel requests additional time. Government counsel has no objection to defense counsel's request for additional time. Given the holiday season, defense counsel has suggested a schedule to government counsel to ensure that neither government counsel nor the Court needs to address the motion over the holidays;

7. Accordingly, the proposed motion schedule is as follows:

Motion to Dismiss Filed: December 28, 2010

Response Due: January 18, 2011

Reply Due: January 25, 2011

Motion Hearing: February 1, 2011 at 2:30 p.m

8. The parties jointly request that the Court exclude the period of time between September 28, 2010 and December 28, 2010 be excluded from calculation under the Speedy Trial Act for effective preparation of counsel and continuity of counsel; namely, counsel needs more time to analyze and file the motion to dismiss and cannot due in a vigorous manner while she is responsible for a case of mandatory life imprisonment and is preparing for trial on a different complex case. *See* 18 U.S.C. § 3161(h)(7)(A) and (b)(iv).

IT IS SO STIPULATED.

DATED: November 9, 2010 _____/S/_____

ELIZABETH M. FALK
Assistant Federal Public Defender

DATED: November 9, 2010 _____/S/_____

LOWELL POWELL
Special Assistant United States Attorney

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~~[PROPOSED]~~ ORDER

GOOD CAUSE APPEARING, it is hereby ORDERED that the schedule on Defendant's Motion to Dismiss is hereby CONTINUED as stated in this stipulation. The hearing on the Motion to Dismiss is hereby continued to February ⁸ 8, 2011 at 2:30 p.m., and the December 14, 2010 motion hearing date is hereby vacated. The Court further orders and finds, pursuant to 18 U.S.C. § 3161(h)(7)(A) and (B)(iv) and the reasons stated in this stipulation, that the failure to grant the requested continuance would deny defense counsel the reasonable time necessary for effective preparation of a defense. Accordingly, the Court will exclude the time period of September 28, 2010 through December 28, 2010 from the Speedy Trial calculation, and finds that the ends of justice served by granting the requested two-week continuance outweighs the best interest in the defendant and the public in a speedy trial.

18 U.S.C. § 3161(h)(7)(A) and (B)(iv)

IT IS SO ORDERED.

DATED: __ 11/12/10 _____



THE HONORABLE RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE